

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 9394
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a 47-year-old woman who has a G.E.D. and a few weeks' training in business management at a local college. She had no significant work history prior to 1987. Since 1987 she has had fifteen to twenty jobs, the longest of which lasted 6 months. She primarily worked as a housekeeper, dishwasher or waitress in restaurants and hotels. She felt she was unable to do the moving or lifting required in those jobs and quit them before she was fired. Her last job as a basket weaver was in April of 1987. She quit that job after 3 1/2 days because it required 8 hours of standing which she felt she could not do.

2. The petitioner has experienced low back pain for almost ten years which has worsened as of late. She also has stiff and numb fingers in her hands in the morning. The petitioner has been unable to finance tests which might

pinpoint the cause of her back pain and finger stiffness. However, her treating physician suspects she has polyarthrititis. Stress and obesity also play a role in the exacerbation of her symptoms.

3. Based on her testimony and the written opinion of her treating physician, it is found that the petitioner suffers severe pain and stiffness due to her medical conditions of a prolonged and chronic nature. Her pain and stiffness limits her ambulation and ability to sit to no more than 15 - 20 minutes. She also is significantly restricted in her ability to lift (15 pounds or less), pull, tug, and lift outstretched. She cannot stoop or bend but must get on her hands and knees to retrieve objects from the floor. Her hands are usually not impaired but at times she has swelling and stiffness in her right hand. She has experienced this level of severity since at least January of 1989 and worked from January to April only through economic necessity and in considerable pain. It is expected that her pain will continue and worsen indefinitely unless treated.

4. The petitioner's condition may be significantly improved if she can be evaluated and an appropriate medication and/or physical therapy for pain and inflammation can be prescribed. The petitioner has had no money to pay for tests or medication in the past.

5. The petitioner's condition may also be significantly improved if, in combination with other

prescribed therapies, she undergoes a weight reduction and maintenance program. Although the records indicate that at one time she did cooperate in such an effort, at present she does not believe weight is a contributing factor and she refuses to lose weight.

6. The petitioner lives with her mentally disabled adult daughter in an upstairs apartment. She climbs the stairs slowly and with great difficulty. She cooks their meals and does some dishes and light housework as her pain allows. She is in some pain all day and on bad days, which occur a couple of times per week, she stays in bed all day. She spends her day reading, watching TV and occasionally sewing for her grandchildren who live nearby. Her back and hand pain do not allow her to lift her small grandchildren or to baby-sit for them. She walks about one-half hour per day. She has a driver's license but does not drive because her car was repossessed.

ORDER

The department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the

national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The medical evidence shows that the petitioner cannot even perform a full-range of sedentary work¹ because pain and stiffness in her back do not even allow her to sit down for more than a few minutes. Therefore, a determination that the petitioner is not disabled cannot be made using the Listing of Medical-Vocational Guidelines in 20 C.F.R. § 404, Appendix II, Subpart P (the "grid"). It appears, moreover, that the majority of the physical abilities usually considered essential to obtaining work, are severely compromised by pain in this case. The petitioner's work history shows that pain significantly compromised her ability to retain employment. As it is difficult to imagine what employment might be available to a person who can neither sit, stand nor walk for more than a few minutes at a time, it must be determined that the petitioner's medical impairment is severe, that once it prevents her from engaging in basic work activities and that this condition either has been or will continue for a twelve month period. Therefore, she meets the definition for disability found in the Medicaid statute, at least at this time.

Because a specific finding has been made herein that the petitioner's condition is expected to improve with more detailed diagnosis and proper treatment, it is recommended that the petitioner should be required to present further

evidence to the department within six months of the treatment she has undergone and her medical status. The petitioner is put on notice that her Medicaid will be terminated if the severity of her symptoms has decreased to the point that they no longer pose a significant restriction on her capacity to do basic work activities. (See 20 C.F.R. § 416.994(b)(1)(i) and (iii)).

Her benefits should also be terminated if the evidence shows that she failed to follow prescribed treatment which would be expected to restore her ability to engage in substantial gainful activity. (20 C.F.R. § 416.994(b)(4)(iv)). What this means is that the petitioner will be expected to follow all medical advice given to her by her doctor to the extent she is able and does not have good cause to do otherwise. With regard to this requirement, the petitioner is specifically directed to her physician's advice regarding weight reduction. Her failure to at least attempt to follow his advice at present does not disqualify her for failure to follow treatment because the evidence indicates that her pain will probably only be alleviated by a combination of treatments of which weight reduction is only one. However, once she begins medication or physical therapy, the petitioner's failure to attempt to reduce her weight may become more significant in regard to alleviating what pain she may then be experiencing. The petitioner should be forewarned that her cooperation in this regard may be scrutinized by the department to the extent

that the petitioner may claim in the future that her condition has not improved.

FOOTNOTES

¹"Sedentary" work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

#